

**A RESOLUTION BY COUNCIL MEMBER**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SERENBE PHASE 1B & 1C HOMEOWNERS ASSOCIATION, INC. PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY LOCATED UNINCORPORATED FULTON COUNTY, GEORGIA, TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.**

**WHEREAS**, Serenbe Phase 1B & 1C Serenbe Development Corporation. ("SDC") wishes to build 224 residential lots in a subdivision located unincorporated Fulton County outside of the municipal boundaries of the City of Atlanta ("City"); and

**WHEREAS**, the proposed single-family homes would be served with potable water from the City; and

**WHEREAS**, The City typically requires that water meters be located at the "service connection" location either on City property, in the right-of-way or within an easement or license granted to the City; and

**WHEREAS**, Section 154-116 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

**WHEREAS**, Serenbe Phase 1B & 1C proposes to locate one hundred (100) water meters at locations different than the service connection location, to allow each meter to be located on private property on an individual lot in the Subdivision; and

**WHEREAS**, it is desirable and in the best interests of the City to enter into an Agreement with Serenbe Phase 1B&1C setting forth the terms between the parties concerning the installation of and responsibility for water system infrastructure, including meters, within the Subdivision.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, THAT**, the Mayor is authorized to execute with Serenbe Phase 1B&1C an Agreement for the non-standard location of water meters on private property located within the Subdivision.

**BE IT FURTHER RESOLVED**, that the City Attorney is authorized to prepare an Agreement with Serenbe Phase 1B&1C for this transaction, as deemed necessary and appropriate or as required by law.

**BE IT FURTHER RESOLVED**, that the Agreement will not become binding upon the City and the City will not be liable or obligated under it until it has been duly executed by Serenbe Phase 1B&1C, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to Serenbe Phase 1B&1C.

## AGREEMENT

This AGREEMENT ("Agreement") is entered into this 3rd day of November, 2005, between **Serenbe Development Corporation ("SDC")**, a Georgia corporation, and the City of Atlanta ("City"), a Georgia municipal corporation.

### **BACKGROUND:**

Section 154-66 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

The City typically requires that water meters be located at the "service connection" location to be on City property, in the right-of-way or within an easement or license granted to the City; and

**SDC** is developing **Serenbe Community**, in Land Lots 44, 45 and 46, 8th District, a mixed-use planned development community ("Community"), currently consisting of **two hundred twenty four (224)** residential lots, located in Fulton County, Georgia, and in which area water service is provided by the City; a description of the entire property being attached hereto and incorporated herein by reference as Exhibit "1"; and

In this phase (Phase IB & IC and the Town Center), **SDC** proposes to locate up to one-hundred (**100**) water meters at locations different than the service connection location, to allow each meter to be located on an individual lot.

**SDC**, as part of the proposal, will install water-mains running to fire hydrants as per **SEI drawings 8, 9 and 10 dated September 26, 2005** and **SEI drawing 3 dated November 3, 2005**. Water meters will be located at various points along the water main to service the lots. **SDC** will grant an easement for city use to be recorded and shown on the subdivision's final plat.

Accordingly, the City and **SDC** agree as follows:

1. **Construction of Water System; Location of Meters.** Except as it may be modified pursuant to Section 3.1 of this Agreement, the water system for the Subdivision will be constructed in accordance with the Plans attached as Exhibit A, entitled **Water Distribution Plan – Serenbe Phase IB & IC**, prepared by **SEI**, dated **September 26, 2005** and **Water Distribution Plan – Serenbe Town Center Phases I, II and III**, prepared by **SEI** dated **November 3, 2005**. The water system for the Community will contain individual water meters at the locations shown on Exhibit A. The City agrees that each individual water meter

will be owned and read by the City or its representatives at the locations set forth on Exhibit A for the purposes of rendering bills to each individual property owner for its respective and independent water use. SDC agrees that the City or its representatives shall have the authority to enter the Community to read any meter, and this Agreement constitutes a right of entry, license and agreement by SDC that the City or its representatives are authorized to enter such Community and that entry will not constitute a trespass. SDC agrees, prior to the sale of any lots and water service to any residence being established, to place within the recorded Declaration of Covenants and Restrictions applicable to the Community a covenant that each property owner and the Homeowners Association: (i) acknowledges the City's or its representatives' license to enter the Community, including all privately owned individual lots, to read water meters, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with respect to water services provided to it and water infrastructure located within the Community; (iii) acknowledges that water services provided to the Community are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence or the meter and a non-residential, Homeowners Association outlet must be maintained and repaired by the resident or the Homeowners Association in accordance with all applicable laws and specifications for water system infrastructure; and (v) acknowledges that the Homeowners Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the Community. SDC further agrees to record an appropriate easement or easements in favor of the City applicable to the Community, including all privately owned individual lots, granting the City ingress and egress for pedestrian and vehicular traffic for the purpose of reading individual water meters within the Community. Said easement(s) shall be recorded as part of the final plat of subdivision for **Serenbe Community**.

2. **"Service Connection; Infrastructure Responsibilities.** The "service connection" location for the Community will not be located where any individual water meter is located. Instead, the "service connection" location will be at the point of the water system on the **northwest corner of the intersection of Atlanta-Newnan Road and Selborne Lane** with valves ("Valves") as shown on Exhibit A, so that the City's responsibility for the public portions of the water system includes the Valves. SDC agrees that it is entirely responsible, at its expense, for the construction of all water services infrastructure located immediately after the "service connection" and throughout the Community. The City's approval of Exhibit A does not encompass an approval that the materials proposed to be installed in the Community in the form of water services infrastructure, except for materials identified on the Exhibit A as being installed per City or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).

### 3. Miscellaneous:

3.1. **Future Modifications to Exhibit A Authorized.** Should the Community be modified in the future so as to alter or increase the land area and number of individual residential water meters within the **Serenbe Community** development beyond that set forth in Exhibit A, the provisions of this Agreement shall also apply to said modified area and associated individual water meters, provided the water system plan for said modified area has been approved by the City's Department of Watershed Management and further provided the total number of individual water meters at **Serenbe Community** shall not exceed **two hundred twenty four (224)**. In the event of such modification, **SDC** agrees to comply with all requirements of this Agreement relating to such modified land area or number of individual residential water meters, including, but not limited to, recording an amended Declaration of Covenants and Restrictions and easement, as contemplated under the Clause titled "**Construction of Water System; Location of Meters**".

3.2. **Binding Effect.** This Agreement will inure to the benefit of and be binding upon **SDC** and the City, their legal representatives and permitted successors and assigns.

3.3. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would have been the case had the invalid or unenforceable provisions of this Agreement had never been a part of this Agreement.

3.4. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.

3.5. **Forum Selection Clause.** The City and **SDC** agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.

#### 3.6. Ethics: Gratuities And Kickbacks.

3.6.1. **Gratuities and Kickbacks.** The right of **SDC** to proceed under this Agreement may be terminated if, after notice and hearing, City determines that **SDC**:

3.6.1.1. offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of City; and

3.6.1.2.intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

3.6.2. **Rights and Remedies.** The rights and remedies of City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3.7. **Contingent Fees.** SDC warrants that it has not employed or retained any company or person, other than a bona fide employee, contractor, or legal counsel working for it, to solicit or secure this Agreement; and that SDC has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City will have the right to terminate this Agreement, and collect from SDC the full amount of such fee, commission, percentage, gift or consideration.

3.8. **Further Acts.** SDC agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

**CITY:**

**SERENBE DEVELOPMENT  
CORPORATION**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**Name: Stephan D. Nygren  
Title: President**

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**MUNICIPAL CLERK (Seal)**

\_\_\_\_\_  
**Name: S. Rox Green  
Title: Secretary**

**APPROVED:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**COMMISSIONER, DEPARTMENT OF  
WATERSHED MANAGEMENT**

\_\_\_\_\_  
**CITY ATTORNEY**

## EXHIBIT "1"

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 135 of the 17th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at a point on the southwest right-of-way line of Long Island Drive (150 foot right-of-way) 2029.8 feet northerly and northwesterly as measured along the westerly and southwesterly right-of-way line of Long Island Drive and following the curvature thereof, from the intersection of the western margin of Long Island Drive with the northern right-of-way of Londonderry Road, and running thence northwesterly along the southwest right-of-way line of Long Island Road and following the curvature thereof 337.6 feet to an iron pin found; thence running southwesterly along a line forming an interior angle of 99 degrees 50 minutes with the chord of the preceding course a distance of 224.6 feet to an iron pin found; thence running westerly along a line forming an interior angle of 201 degrees 59 minutes with the preceding course of 269.3 feet to an iron pin found; thence continuing westerly along a line forming an interior angle of 180 degrees 31 minutes with the preceding course a distance of 65 feet to an iron pin found; thence running in a southern direction 416.5 feet to an iron pin found on the south line of the property conveyed by W.A. Phillips to Sam G. Riddick by warranty deed dated March 9, 1987, recorded in Deed Book 3202, page 354, Fulton County Records; thence easterly along the south line of the property so conveyed 132.7 feet to an iron pin found; thence running northeasterly along a line forming an interior angle of 148 degrees 53 minutes with the preceding course a distance of 443.8 feet to an iron pin found at the point of beginning on the southwest right-of-way line of Long Island Drive, being improved property known as 5300 Long Island Drive according to the present system of numbering houses in Fulton County, Georgia.